

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4916 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MENABEN W/O. DIPUBHAI GAJUBHAIGARANGEY

Versus

COMMISSIONER OF POLICE

Appearance:

MR JS RATHOD for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/12/1999

ORAL JUDGEMENT

1. The petitioner is a detainee who has been detained under the PASA by virtue of an order passed by the Commissioner of Police, Ahmedabad city, Ahmedabad, dated 10th March 1999 in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [for short 'the PASA Act'].

2. The detaining authority considered six registered

offences against the petitioner under the Bombay Prohibition Act. The detaining authority also considered the statement of two witnesses and ultimately recorded a subjective satisfaction that the petitioner is a bootlegger and her activities are detrimental to public order and therefore, it is necessary to detain the detainee under the PASA Act.

3. The petitioner has challenged the order of detention by this petition under Article 226 of the Constitution of India, mainly on the ground that there was improper exercise of powers u/s 9[2] of the PASA Act. The subjective satisfaction arrived at by the detaining authority is genuine and therefore, the petitioner is deprived of the right of making an effective representation and the order of detention is therefore stands vitiated.

4. The respondents are served and they appeared through learned AGP Mr. H.H.Patel. No reply is filed.

5. Mr. Rathod, learned advocate appearing for the petitioner has restricted his the arguments to the above ground and tried to emphasize that the order is bad. He submitted that out of the two statements, one statement was recorded on 7/3/99 and the other statement was recorded on 8/3/99. The two statements are verified on 10/3/99 and the order of detention is passed on same day i.e. on 10/3/99. He submitted that there was no time for the detaining authority to verify the correctness of the incidents cited by the witnesses and genuineness of the fear expressed by the witnesses and the subjective satisfaction arrived at by the detaining authority for exercise of powers u/s 9[2] and claim of privilege are therefore not genuine and the order of detention, therefore, would stand vitiated. He submitted that the petition may therefore be allowed.

6. The petition deserves to be allowed on the ground emphasized by the learned advocate for the petitioner. It is not disputed that the statements of witness were recorded on 7/3/99 and 8/3/99. The statements came to be verified by the detaining authority on 10/3/99 and the order of detention came to be passed on 10/3/99 itself. While passing the order, the detaining authority recorded a satisfaction about the correctness and genuineness of the statements of the witnesses in regard to the incidents narrated by the witnesses as well as fear expressed by the witnesses. The authority therefore having been satisfied about the genuineness of the fear expressed by the witnesses exercised the powers u/s 9[2] of the PASA Act and claimed privilege of not disclosing

the identity of these witnesses.

7. In the opinion of this court, there was no time lag between the verification and the passing of the order which could have reasonably possibalized for the authority to do the exercise of ascertaining the correctness and genuineness of the fear expressed by the witnesses. The privilege u/s 9[2] is not expected to be exercised in a mechanical manner. Some independent exercise is required to be carried out by the detaining authority before exercising powers u/s 9[2] of the PASA Act, because this exercise of powers deprives the detainee of making an effective representation which is a right guaranteed by the Constitution of India. This is not a mere empty formality. In addition to interrogating the witnesses, it would be reasonable to expect of such authority before exercise of powers u/s 9[2] to cross check the happening of incidents stated by the witnesses as well as fear expressed by the witnesses. Simply interrogation of witnesses is no verification expected of the detaining authority while exercising powers u/s 9[2] of the PASA Act. As the authority has to ascertain before exercising these powers whether this exercise of power is necessary in the public interest. Therefore, if the statements are verified on the same day, on which the order is passed, there is no time lag sufficient enough for the authority to cross cheque the statements of the witnesses and then to arrive at a subjective satisfaction about the need for exercise of powers u/s 9[2] of the PASA Act in public interest. The powers are to be exercised with a serious consideration to the fact that it has a bearing not only on public interest, but also on the right of a detainee of making an effective representation guaranteed by the Constitution of India. The authority has to strike a balance between the two in such situations.

8. It is therefore found in the instant case that there was no time lag sufficient enough to provide room for the detaining authority to verify the correctness and genuineness of the statements made by the anonymous witnesses regarding the incidents as well as fear expressed by them qua the petitioner and therefore, the exercise of powers u/s 9[2] of the PASA Act does not seem to be genuine. This would vitiate the order of detention and this would in itself be sufficient ground for quashing and setting aside the order.

9. In this regard, the decision in the case of Kalidas Chandulal Kahar v/s State of Gujarat as reported in 1993 [2] GLR 1659 and Chandrakant N. Patel v/s State

of Gujarat & ors. reported in 1994 [1] GLR 761, may be profitably referred to.

10. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad city, Ahmedabad dated 10th March 1999, in respect of the petitioner Smt. Menaben w/of Dipubhai Gajubhai Chhara, is hereby quashed and set aside. The petitioner be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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